

## EXHIBIT 3-A

### FEDERAL REGULATIONS GOVERNING CONFLICT OF INTEREST IN THE CDBG PROGRAM

(As adopted by the U.S. Department of Housing and Urban Development (HUD), Office of Community Planning and Development in the regulations for the Entitlement CDBG Program published in the Federal Register, September 6, 1988: 24 Code of Federal Regulations (CFR) - Part 570). In the case of Montana's CDBG Program, MDOC may act in the place of HUD regarding conflicts of interest involving local CDBG projects.

#### 570.611 Conflict of Interest

(a) Applicability

1. In the procurement of supplies, equipment, construction, and services by recipients, and by subrecipients (including those specified a paragraph 570.204(c), the conflict of interest provisions in 24 CFR 85.36 and OMB Circular A-110, respectively, shall apply.

2. In all cases not governed by 24 CFR 85.36 and OMB Circular A-110, the provisions of this section shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance by the recipient, by its subrecipients, or to individuals, businesses or other private entities under eligible activities which authorize such assistance (e.g. rehabilitation, preservation, and other improvements, of private properties of facilities pursuant to paragraph 570.202, or grants, loans and other assistance to businesses, individuals and other private entities pursuant to paragraphs 570.203, 570.204, or 570.455).

(b) Conflicts prohibited. Except for the use of CDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions for responsibilities, with respect to CDBG activities, assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from CDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect hereto or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) Persons covered. The conflict of interest provision of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or subrecipients which are receiving funds under this part.

(d) Exceptions; threshold requirements. Upon the written request of the recipient, HUD (MDOC) may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis when it determines that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

1. A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  2. An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.
- (e) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (d) of this section. HUD (MDOC) shall consider the cumulative effect of the following factors, where applicable:
1. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available;
  2. Whether an opportunity was provided for open competitive bidding or negotiation;
  3. Whether the person affected is a member of a group or class of low-or-moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  4. Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
  5. Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;
  6. Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
  7. Any other relevant considerations.

## **MONTANA STATE STATUTES ESTABLISHING ETHICAL STANDARDS AND RULES OF CONDUCT FOR, AND PROHIBITING CONFLICTS OF INTEREST BY, PUBLIC OFFICIALS AND EMPLOYEES**

### **2-2-104. Rules of conduct for public officers, legislators, and public employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached the actor's public duty. A public officer, legislator, or public employee may not:

(a) disclose or use confidential information acquired in the course of official duties in order to further substantially the individual's personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift:

(i) that would tend improperly to influence a reasonable person in the person's position to depart from the faithful and impartial discharge of the person's public duties; or

(ii) that the person knows or that a reasonable person in that position should know under the circumstances is primarily for the purpose of rewarding the person for official action taken.

(2) An economic benefit tantamount to a gift includes without limitation a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of the services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

(3) (a) Except as provided in subsection (3)(b), a public officer, legislator, or public employee may not receive salaries from two separate public employment positions that overlap for the hours being compensated, unless:

(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary paid for performing the function from which the officer, legislator, or employee is absent; or

(ii) the public officer's, legislator's, or public employee's salary from one employer is reduced by the amount of salary received from the other public employer in order to avoid duplicate compensation for the overlapping hours.

(b) Subsection (3)(a) does not prohibit:

(i) a public officer, legislator, or public employee from receiving income from the use of accrued leave or compensatory time during the period of overlapping employment; or

### **2-2-105. Ethical requirements for public officers and public employees.**

(1) The requirements in this section are intended as rules of conduct, and violations constitute a breach of the public trust and public duty of office or employment in state or local government.

(2) Except as provided in subsection (4), a public officer or public employee may not acquire an interest in any business or undertaking that the officer or employee has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by the officer's or employee's agency.

(3) A public officer or public employee may not, within 12 months following the voluntary termination of office or employment, obtain employment in which the officer or employee will take direct advantage, unavailable to others, of matters with which the officer or employee was directly involved during a term of office or during employment. These matters are rules, other than rules of general application, that the officer or employee actively helped to formulate and applications, claims, or contested cases in the consideration of which the officer or employee was an active participant.

(4) When a public employee who is a member of a quasi-judicial board or commission or of a board, commission, or committee with rulemaking authority is required to take official action on a matter as to which the public employee has a conflict created by a personal or private interest that would directly give rise to an appearance of impropriety as to the public employee's influence, benefit, or detriment in regard to the matter, the public employee shall disclose the interest creating the conflict prior to participating in the official action.

(5) A public officer or public employee may not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when the officer or employee has a substantial personal interest in a competing firm or undertaking.

#### **2-2-125. Rules of conduct for local government officers and employees.**

(1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

- a. engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or
- b. perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 2-2-131.

#### **2-2-201. Public officers, employees, and former employees not to have interest in contracts.**

(1) Members of the legislature; state, county, city, town, or township officers; or any deputies or employees of an enumerated governmental entity may not be interested in any contract made by them in their official capacity or by any body, agency, or board of which they are members or employees if they are directly involved with the contract. A former employee may not, within 6 months following the termination of employment, contract or be employed by an employer who

contracts with the state or any of its subdivisions involving matters with which the former employee was directly involved during employment.

(2) In this section, the term:

(a) "be interested in" does not include holding a minority interest in a corporation;

(b) "contract" does not include:

(i) contracts awarded based on competitive procurement procedures conducted after the date of employment termination;

(ii) merchandise sold to the highest bidder at public auctions;

(iii) investments or deposits in financial institutions that are in the business of loaning or receiving money;

(iv) a contract with an interested party if, because of geographic restrictions, a local government could not otherwise reasonably afford itself of the subject of the contract. It is presumed that a local government could not otherwise reasonably afford itself of the subject of a contract if the additional cost to the local government is greater than 10% of a contract with an interested party or if the contract is for services that must be performed within a limited time period and no other contractor can provide those services within that time period.

(c) "directly involved" means the person directly monitors a contract, extends or amends a contract, audits a contractor, is responsible for conducting the procurement or for evaluating proposals or vendor responsibility, or renders legal advice concerning the contract;

(d) "former employee" does not include a person whose employment with the state was involuntarily terminated because of a reduction in force or other involuntary termination not involving violation of the provisions of this chapter.

### **7-3-4367. Control of conflict of interest.**

(1) Commissioners and other officers and employees shall not be interested in the profits or emoluments of any contract, job, work, or service for the municipality and shall not hold any partisan political office or employment. Any commissioner who shall cease to possess any of the qualifications herein required shall forthwith forfeit his office, and any such contract in which any member is or may be interested may be declared void by the commission.

(2) No commissioner or other officer or employee of said city or town shall accept any frank, free ticket, pass, or service, directly or indirectly, from any person, firm, or corporation upon terms more favorable than are granted to the public generally. Any violation of the provisions of this section shall be a misdemeanor and shall also be sufficient cause for the summary removal or discharge of the offender. Such provisions for free service shall not apply to policemen or firefighters in uniform or wearing their official badges where the same is provided by ordinance or to any commissioner or to the city manager or to the city attorney upon official business, or to any other employee or official of said city on official business who exhibits written authority signed by the city manager.

#### **7-5-2106. Control of conflict of interest.**

No member of the board must be directly or indirectly interested:

- (1) in any property purchased for the use of the county;
- (2) in any purchase or sale of property belonging to the county; or
- (3) in any contract made by the board or other person on behalf of the county for the erection of public buildings, the opening or improvement of roads, the building of bridges, or the purchasing of supplies or for any other purpose.

#### **7-5-4109. Control of conflict of interest.**

(1) The mayor, any member of the council, any city or town officer, or any relative or employee of an enumerated officer may not be directly or indirectly interested in the profits of any contract entered into by the council while the officer is or was in office.

(2) The governing body of a city or town may waive the application of the prohibition contained in subsection (1) for a city or town officer or employee, or to the relative of an officer or employee, if in an official capacity the officer or employee does not influence the decisionmaking process or supervise a function regarding the contract in question. A governing body may grant a waiver under this subsection only after publicly disclosing the nature of the conflict at an advertised public hearing held for that purpose. In determining whether to grant a waiver, the governing body shall consider the following factors, where applicable:

- (a) whether the waiver would provide to a program or project a significant benefit or an essential skill or expertise that would otherwise not be available;
- (b) whether an opportunity was provided for open competitive bidding or negotiation;
- (c) whether the person affected is a member of a clearly identified group of persons that is the intended beneficiary of the program or project involved in the contract; and
- (d) whether the hardship imposed on the affected person or the governmental entity by prohibiting the conflict will outweigh the public interest served by avoiding the conflict.

**SAMPLE NOTICE FOR A PUBLIC HEARING TO REVIEW  
A POTENTIAL CONFLICT OF INTEREST**

NOTICE OF PUBLIC HEARING

The (Town Council/City of / County Commissioners) will hold a public hearing on (day)  
, (month), 200  , in (building or location) at (time). The  
purpose of the hearing is to review a potential conflict of interest situation involving the (Town's,  
City's or County's) (type of project) project which is being funded, in part, through a  
Community Development Block Grant (CDBG) from the Montana Department of Commerce. At  
the hearing, the (Council, Board of Commissioners) will explain the state and federal regulations  
governing conflict of interest, consider their application in this case, and decide whether or not to  
request the Department for an exception from the regulations. The public is invited to attend.  
Persons seeking more information about this matter should contact:  
(Name), (Title), (Telephone) during regular office  
hours.